CHAPTER 57-39.5
FARM MACHINERY GROSS RECEIPTS TAX

57-39.5-01. Definitions.

Words used in this chapter have the same meaning as provided in chapter 57-39.2. As used in this chapter:

1. "Attachment unit" means any part or combination of parts having an independent function, other than farm machinery repair parts, which when attached or affixed to farm machinery is used exclusively for agricultural purposes.
2. "Farm machinery" means all vehicular implements and attachment units, designed and sold for direct use in planting, cultivating, or harvesting farm products or used in connection with the production of agricultural produce or products, livestock, or poultry on farms, which are operated, drawn, or propelled by motor or animal power. "Farm machinery" does not include vehicular implements operated wholly by hand or a motor vehicle required to be registered under chapter 57-40.3. "Farm machinery" does not include machinery that may be used for other than agricultural purposes, including tires, farm machinery repair parts, tools, shop equipment, grain bins, feed bunks, fencing materials, and other farm supplies and equipment.
3. "Lease" or "leasing" means an agreement with a term of more than eleven months, between two persons for the possession and use of property and which may or may not include provision for a transfer of ownership of the property.
4. "Rental" or "renting" means an agreement with a term of not more than eleven months, between two persons for the possession and use of property and which does not include provision for a transfer of ownership of the property.

57-39.5-01.1. Trade-in deduction.

1. When tangible personal property is taken in trade or in a series of trades as a credit or partial payment of a retail sale or lease agreement which is taxable under this chapter, if the tangible personal property traded in will be subject to gross receipts taxes imposed by this chapter, sales taxes imposed by chapter 57-39.2, or motor vehicle excise taxes imposed by chapter 57-40.3, or if the tangible personal property traded in is used farm machinery or used irrigation equipment, the credit or trade-in value allowed by the retailer is not gross receipts.
2. Tangible personal property owned or leased and in possession of a farmer may be used as a trade-in to reduce the taxable purchase price of farm machinery or irrigation equipment used exclusively for agricultural purposes if:
   a. The retailer selling farm machinery or irrigation equipment to a lessor, for the purpose of leasing to a farmer, also purchases the machinery or equipment owned or leased and in possession of the farmer. The purchase price paid by the retailer for the equipment owned or leased and in the possession of a farmer is the trade-in value for purposes of this section;
   b. The retailer's sale of farm machinery or irrigation equipment to a lessor for the purpose of leasing to a farmer and the retailer's purchase of equipment owned or leased and in the possession of a farmer are documented by an invoice or other documents prepared by the retailer to substantiate the trade-in relationship;
   c. The lessor purchasing the farm machinery or irrigation equipment for the purpose of leasing to a farmer pays the taxes imposed under this chapter on the purchase price of the equipment less the trade-in value in subdivision a; and
   d. The retailer and the lessor maintain records documenting compliance with the requirements in subdivisions a, b, and c.
3. For purposes of this section, "farmer" means any person that leases farm machinery as defined in this chapter or irrigation equipment to be used exclusively for agricultural purposes.

57-39.5-02. Imposition - Transfer of funds - Exemptions.

There is imposed a tax of three percent upon the gross receipts of retailers from all sales at retail, including the leasing or renting, of farm machinery or irrigation equipment used exclusively for agricultural purposes. After July first of each year, five hundred thousand dollars of taxes collected under this chapter must be transferred to the state treasurer who shall deposit the moneys in the agricultural research fund. Gross receipts from sales at retail of farm machinery or irrigation equipment are exempted from the tax imposed by this chapter when the sale, lease, or rental is made to a purchaser or lessor who is entitled to a sales and use tax exemption under subsection 6 or 12 of section 57-39.2-04 on otherwise taxable sales at retail. There are specifically exempted from the tax imposed by this chapter the gross receipts from the sale, lease, or rental of used farm machinery, farm machinery repair parts, used irrigation equipment, or irrigation equipment repair parts used exclusively for agricultural purposes. For purposes of this section, "used" means:

1. Tax under this chapter or chapter 57-39.2 or 57-40.2 has been paid on a previous sale;
2. Tax under section 57-39.5-06 has been paid under a previous lease;
3. Originally purchased outside this state and previously owned by a farmer; or
4. Has been under rental for three years or more.

57-39.5-03. Replacement of insured machinery credit.

When new farm machinery is purchased as a replacement for machinery on which the insurant has previously paid the gross receipts, sales, or use tax and which was stolen or totally destroyed, a credit or trade-in credit is allowed against one or more replacement purchases in a cumulative amount equal to the compensation received for the loss from the insurance company. The purchaser shall provide the seller with a notarized statement from the insurance company verifying that the original farm machinery was a total loss and indicating the amount of compensation. If the full amount of the credit under this section has not been used, the seller shall retain a copy of the notarized statement and, if the full amount of the credit has been used, the seller shall retain the original notarized statement to verify the amount of credit or trade-in credit allowed.

57-39.5-04. Administration.

The provisions of chapter 57-39.2 pertaining to administration of the retail sales tax, including provisions for refund, credits, retailer compensation, or adoption of rules, not in conflict with this chapter or federal law, govern the administration of the gross receipts tax imposed in this chapter.

57-39.5-05. Use tax and credit for taxes paid.

1. A person who receives farm machinery for storage, use, or consumption in this state is subject to tax on storage, use, or consumption of that farm machinery at the rate imposed under section 57-39.5-02.
2. A person subject to taxes under subsection 1 who has paid taxes to another state or political subdivision of a state as required by law on the purchase of the farm machinery is entitled to a credit against the tax due under subsection 1 equal to the lesser of the tax actually paid to the other state or political subdivision or the amount of tax imposed under subsection 1.

57-39.5-06. Payment of tax under lease agreement.

At the time of entering a lease agreement for new farm machinery or irrigation equipment subject to taxes under this chapter, the lessor shall:

1. Pay the taxes imposed under this chapter on the purchase price of the equipment that was purchased for the purpose of leasing;
2. On a lease with a term of three or more years, collect and remit to the commissioner the full amount of tax due under this chapter based on the cumulative value of three years of lease payments or collect the tax due on each lease payment under the agreement for three years and remit those amounts to the tax commissioner as those

amounts are collected. If a lease agreement with a term of three years or more is terminated before tax on three years of lease payments has been remitted, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the three-year period; or

3. On a lease with a term of less than three years, collect and remit to the commissioner the full amount of tax calculated on the equivalent value of three years of lease payments. The equivalent value of three years of lease payments is the sum of the lease payments under the agreement divided by the term of the lease in months times thirty-six. The tax may be collected and remitted to the commissioner in equal installments with each lease payment over the term of the lease. If a lease agreement with a term of less than three years is terminated before the end of the lease, the lessor shall collect and remit to the tax commissioner any remaining uncollected taxes on the equivalent value of three years of lease payments.